

# The Death Penalty in Kenya: A Punishment that has Died Out in Practice

## Introduction

Having not carried out an execution for over 30 years, Kenya is today considered 'abolitionist de facto'. In 2017, the country went a step further and abolished the mandatory death penalty, but to this day death sentences continue to be handed down.

Since the late 1990s there have been several calls for abolition but none have been successful.



**The last execution in Kenya took place in 1987**

In recent years, the Kenyan government has reiterated its commitment to reviewing the retention of the death penalty. In 2018, the Kenyan Law Reform Commission recommended that the punishment should be abolished.



**There are four crimes currently punishable by death: treason, murder, robbery with violence and attempted robbery with violence**

**There are approximately 600 people on death row in Kenya**



Concerns have been expressed by Kenyan policy-makers that the public would oppose abolition but until now there has been limited research on the public's attitudes to the death penalty.

In 2021, The Death Penalty Project and the Kenya National Commission on Human Rights commissioned Prof. Carolyn Hoyle, Director of The Death Penalty Research Unit, at the University of Oxford, to undertake research in order to provide accurate data on attitudes towards the death penalty in Kenya.

**Part One: A Public Ready to Accept Abolition** - A survey of a representative random sample of 1,672 members of the Kenyan public.

**Part Two: Overwhelming Support for Abolition Among Opinion Leaders** - Interviews were conducted with 42 opinion leaders; people considered influential in shaping, or in responding to, public opinion from across Kenya.

## The public's views on the death penalty

The study revealed that only a tiny majority of the public in Kenya favour retention of the death penalty.

**51%**

**of the public favour retaining the death penalty, 32% strongly**

## Opinion formers' views on the death penalty

The vast majority of opinion formers that took part in the interviews were in favour of abolishing the death penalty.

90%

of opinion formers favour abolishing the death penalty, 82% strongly

This is one of the highest levels of support for abolition across all of the international studies that we have conducted.

### Rationales for opinions

Rationales across both the public and opinion formers were similar. Those in favour of the death penalty believed it was necessary to deter crime and deliver retribution to victims' families.



Those against the death penalty believed that criminals deserved the opportunity for rehabilitation. Opinion formers, were particularly concerned over wrongful convictions and the abuse of human rights.

No respondents wanted to see capital punishment widened in scope, in fact most wanted it to be further restricted.

### Levels of knowledge

The study revealed the Kenyan public's knowledge of the death penalty to be limited.

21%

only 21% knew no executions had taken place in the past 10 years

Most of the opinion formers interviewed were very well informed on the administration of the death penalty in Kenya, but thought that political decision makers were not, especially regarding research on capital punishment.

## Death penalty support is higher in the abstract

Despite 51% of the public initially supporting the death penalty, when presented with a range of realistic case scenarios, most respondents were against its imposition.

*"A man robbed a shop with a gun and shot dead the owner. He had previously been in prison twice for robbery and was found guilty."*

Only 32% thought the man should be executed despite being a repeat offender and the violent nature of the crime. If he had been a first time offender, only 25% said they would support his execution.

### Wrongful conviction & trust in the system

Across both groups there were concerns around the possibility that innocent people could be sentenced to death.

61% of the public - thought that 'many' or 'some' innocent people have been sentenced to death in Kenya

61%

88%

88% of opinion formers believe wrongful convictions occur fairly regularly

Concerns about wrongful executions reduced support for retention from 51%, down to 28%.

### Alternative means of reducing violent crime

When asked to rank measures people believed most likely to prevent serious violent crime, the majority, across both the public and opinion formers, selected social justice measures:

1. Moral education of young people

2. Poverty reduction

3. More effective policing

4%

Only 4% of the public selected 'more executions' as their first choice. None of the opinion formers did so.

## International influence

Over 75% of countries around the world have abolished the death penalty - respondents in both studies were asked if they thought this and the level of regional abolition should influence government policy.

**Public support fell from 51% to 31% when considering abolition in the region**



**93% of opinion formers thought Kenya should be influenced by the high rate of abolition around the world**

**Almost 25% of the public felt that retention of the death penalty harms Kenya's international reputation.**

## Openness to change

The public survey asked if people would accept a government policy of abolition despite their initial position on the punishment.

**59%**

**59% of the public, who were initially in favour of retention, said that they would accept a new policy of abolition**

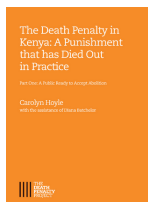
Nearly all opinion formers said that they would support an act of parliament to abolish the death penalty.

**75%**

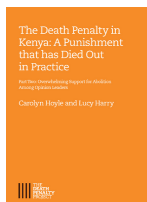
**of opinion formers believed the public would accept abolition of the death penalty, despite initial reservations**

## Download the reports

Both reports are available to download on our [website](https://deathpenaltyproject.org). For more information email [info@deathpenaltyproject.org](mailto:info@deathpenaltyproject.org).



### **Part One: A Study of the Views of the Public**



### **Part Two: A Study of the Views of Opinion**

## Conclusion

Following the recent abolition of the death penalty in Sierra Leone, the African continent continues to move away from capital punishment. Only 4 countries in Africa carried out executions in 2021: Botswana, Egypt, South Sudan and Somalia. This is in line with an increasing global trend to reject the death penalty. Kenya is now among the minority of countries that retain the death penalty, but it has not carried out an execution in nearly 35 years.

The Kenyan government has cited public support as a key argument against abolition, yet the findings of this research do not support that claim.

The research shows that only a tiny majority of the public favour retention and that when they are presented with more information on its application, including realistic case scenarios or mitigating circumstances, support falls dramatically.

Opinion formers are resolutely in favour of abolition. Those interviewed, answered the questions with persuasive arguments that demonstrated robust knowledge on the issue. They also expressed that they felt confident that the Kenyan public would ultimately accept abolition.

We hope this research can help to inform discussions in Kenya regarding the future of the death penalty and serve to reassure policy-makers, seeking to uphold human rights and justice, that like in other jurisdictions we have studied, not only do opinion formers firmly support abolition, but the public holds nuanced and flexible views that would not impede penal reform to remove capital punishment.